

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

RODEO CREEK GOLD INC.

- ☐ Affects this Debtor
☒ Affects all Debtors
☐ Affects Hollister Venture Corporation
☐ Affects Touchstone Resources Company
☐ Affects Antler Peak Gold Inc.

Chapter 11

Case No. BK-13-50301 (MKN)

Jointly Administered

**SUPPLEMENTAL DECLARATION OF
MICHAEL STEWART IN SUPPORT
OF THE SALE MOTION**

MICHAEL STEWART, under penalty of perjury, declares as follows:

1. I am currently a Managing Director of CIBC World Markets, Inc. (“CIBC”). CIBC is the financial advisor and investment banker for the debtors and debtors-in-possession in the above-captioned chapter 11 cases (each a “Debtor” and collectively, the “Debtors”).

2. I lead the CIBC team in the marketing and sale process subject of the *Motion for: (I) an Order (A) Scheduling a Hearing to Consider the Proposed Sale of the Debtors’ Assets and Approving the Form and Manner of Notice Thereof; (B) Establishing Bidding Procedures Relating to the Sale and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, Including Notice of Proposed Cure Amounts, and (C) Granting Certain Related Relief; and (II) an Order (A) Approving the Sale, (B) Authorizing the Sale, Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Certain Related Relief* [Docket No. 16] (the “Sale Motion”) and the *Debtors’ Brief in Support of Proposed Sale in Connection with Motion for an Order (A) Approving the Sale of the Debtors’ Assets to the Winning Bidder at Auction, (B) Authorizing the Sale, Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Certain Related Relief* (the “Supplemental Brief”).¹ Except as otherwise indicated, all facts set forth in

¹ Capitalized terms used but not defined in this Declaration shall have the meaning ascribed to such terms in the Sale Motion or the Supplemental Brief.

1 this Declaration are based upon either my personal knowledge, my review of relevant
2 documents, or my opinion based upon my experience, knowledge, and information concerning
3 the Debtors' financial affairs and the process the Debtors have undertaken in marketing their
4 Nevada Operations. I am over the age of 18 and authorized to submit this Declaration on behalf
5 CIBC. If called upon to testify, I would testify to the facts set forth herein.

6 3. Under my direction, after entry of the Bidding Procedures Order, CIBC
7 contacted one hundred six (106) potential bidders, including parties contacted prior to the
8 Petition Date, that CIBC thought were, or could be, interested in the Nevada Operations. This
9 list included mine owners and operators, private equity funds, investment banks, and similar
10 institutions. I believe that the number and diversity of the potential bidders was instrumental in
11 obtaining the best result at the Auction.

12 4. Fifteen (15) parties signed confidentiality agreements during the Pre-
13 Petition Marketing Process, and an additional twenty-nine (29) parties subsequently entered into
14 confidentiality agreements. Each of the potential bidders that executed confidentiality
15 agreements received certain confidential materials prepared by the Debtors' management, in
16 consultation with CIBC, which provided the potential bidders an in-depth analysis of the Nevada
17 Operations and the Acquired Assets. Furthermore, each of the potential bidders received access
18 to an electronic data room with comprehensive diligence materials regarding the Nevada
19 Operations. Forty (40) potential bidders accessed the data room. CIBC, with the assistance of
20 the Debtors and their counsel, continually updated the data room in order to provide potential
21 bidders with the most up-to-date information available.

22 5. Additionally, the Debtors, through CIBC and the Debtors' other advisors,
23 responded to numerous information requests from potential bidders, and CIBC conducted
24 hundreds of calls with potential bidders. During the Pre-Petition Marketing Phase and the post-
25 Petition Date marketing phase, the Debtors conducted site visits, each of which generally lasted
26 multiple days, for eighteen (18) potential bidders and operators. Eleven (11) potential bidders
27 undertook their site visits after the Petition Date. Such site visits included management
28 presentations, which the Debtors' management prepared in consultation with the CIBC and

1 which contained, among other things, a business overview of the Debtors, a profile of the
2 Debtors' recent history and current situation and a summary of the Debtors' financial
3 performance, explanation of such performance and a five-year financial plan with key
4 assumptions.

5 6. On the Bid Deadline, the Debtors received seven (7) bids. The Debtors
6 and their advisors carefully reviewed each bid in order to qualify the bidders for participation in
7 the Auction and to select the opening bid at the Auction. Although none of the bids that were
8 submitted met all of the criteria specified in the Amended Bidding Procedures to become a
9 Qualified Bid, the Debtors determined, after consulting with their key creditor constituencies, to
10 invite each of the bidders to the Auction in order to foster an environment designed to maximize
11 value for the Debtors' estates.

12 7. Each bidder was permitted to attend the Auction provided such bidder was
13 prepared to: (i) waive any diligence contingencies, (ii) sign a binding Asset Purchase Agreement
14 at the conclusion of the Auction in such bidder's capacity as either the Successful Bidder or
15 Backup Bidder, (3) demonstrate it had the financial wherewithal to provide a deposit and close
16 the transaction, and (4) submit a bid that was higher or better than the opening bid.

17 8. The Auction was conducted on April 23, 2013 at the Sheraton – New York
18 Times Square Hotel, 811 Seventh Avenue, New York, New York 10019 at approximately 9:00
19 a.m. (Eastern Time) and on April 24, 2013 at the New York offices of Willkie Farr & Gallagher
20 LLP, 787 Seventh Avenue, New York, New York 10019 at approximately 10:00 a.m. (Eastern
21 Time). Of the seven (7) bidders, four (4) participated in the Auction. The Auction commenced
22 with the announcement of the opening bid and was followed by extensive discussions and
23 negotiations between the Debtors and each of the Qualified Bidders regarding their bids in an
24 effort to identify the highest and otherwise best bid. The Auction lasted a total of approximately
25 twenty-three (23) hours over the course of two (2) days.

26 9. The Debtors, in consultation with their key constituencies, evaluated each
27 bid based on, among other things, the purchase price and/or the net value provided by such bid,
28 the claims likely to be created by such bid in relation to other bids, the viability of the

1 counterparties to the transaction, the extent of the proposed revisions to the form of asset
2 purchase agreement filed with the Sale Motion and the terms of any related transaction
3 documents, other factors affecting the speed, certainty and value of the proposed transaction, the
4 assets included or excluded from the bid and the transaction costs and risks associated with each
5 bid, the estimated number of employees of the Debtors that would be offered post closing
6 employment by the bidder and any proposed measures associated with their continued
7 employment, the transition services required from the Debtors post-closing and any related
8 restructuring costs, and the likelihood of swiftly and successfully closing the transaction.

9 10. In summary, the Successful Bid generally provides for \$15 million in cash
10 consideration (subject to an upward adjustment on account of certain inventory liquidation
11 parameters), a 15% net profits royalty over a nine (9) year period (capped at \$90 million), any
12 necessary cure amounts, capped at \$5 million, agreement that avoidance actions and non-
13 ordinary course litigation claims would not be included in the Acquired Assets and agreement to
14 make offers of employment to and continue to employ a number of employees of the Debtors.
15 The Backup Bid generally provides for \$15 million in cash consideration (subject to an upward
16 adjustment on account of certain inventory liquidation parameters), a 10% net profits royalty
17 over a nine (9) year period (capped at \$65 million), agreement that avoidance actions and non-
18 ordinary course litigation claims would not be included in the Acquired Assets and agreement to
19 make offers of employment to and continue to employ a number of employees of the Debtors.

20 11. I believe that the Successful Bid represents the highest or otherwise best
21 offer available for the Acquired Assets, and that the Backup Bid represents the next highest or
22 otherwise next best offer available for the Acquired Assets
23
24
25
26
27
28

I declare under the penalty of perjury that the foregoing is true and correct.



Michael Stewart
Managing Director Investment Banking
CIBC World Markets, Inc.